MEMORANDUM OPINION OF THE COURT

The present action was instituted on January 13, 1958, with plaintiff cotending that the defendants were engaged in unfair competition as at common law through the continued use of the trade name FOOD FAIR. The complaint, as amended, further suggests violations of the Lanham Trademark Act, 15 U.S.C. § 1051-1127, and the Virginia statute relating to trademarks. These latter contentions were abandoned during the course of trial and, for this reason, this discussion will be limited to common law unfair competition.

Plaintiff requests injunctive relief and an accounting of profits made by defendants while using the name FOOD FAIR It is plaintiff's theory that the name FOOD FAIR had acquired a secondary meaning in the Norfolk-Portsmouth area when defendant, Lakeland Grocery Corporation, opened its place of business in Norfolk on May 14, 1953. By way of counterclaim, Lakeland seeks injunctive relief and damages alleging that it first appropriated the FOOD FAIR name in the Norfolk-Portsmouth area, and that plaintiff's prior activities were not such as were within the reasonably probable area of expansion of plaintiff's business.

The status of Tri-City Foods, Inc., is of little consequence. By agreement dated June 17, 1957, Lakeland granted Tri-City a non-exclusive license to use the name FOOD FAIR in the City of Portsmouth. Tri-City opened its store on October 9, 1957, and was made a party to this proceeding on June 22, 1959. Following the institution of this proceeding, Lakeland cancelled the license, and Tri-City, claiming the right to use the name only through Lakeland, has abandoned same. The right to an injunction against Tri-City would, in any event, be moot, and the

evidence is not sufficient to show interlocking operations wherein, even if plaintiff should prevail, Tri-City could be held liable for an accounting of profits. In line with comments made at the time of argument, the complaint against Tri-City must be dismissed.

The ultimate issue for determination is whether the Norfolk-Portsmouth area was, as of May 14, 1953, within plaintiff's reasonably probable normal area of expansion. If so, plaintiff is entitled to an injunction. If not, the defendant, Lakeland, must prevail and would be awarded injunctive relief.

Plaintiff's predecessor, Union Premier Food Stores, commenced operations in and around Harrisburg, Pennsylvania, during 1929. Small meat markets and grocery stores were then in vogue. During the depression days of the early thirties, the officers of Union Premier hit upon the idea of self-service supermarkets[1] and, in 1933, opened its first supermarket under the name "Giant Quality Price Cutters, Inc." The success of this operation caused plaintiff to open supermarkets in eight cities throughout Pennsylvania and southern New Jersey by the end of 1935 and, in the interim, plaintiff closed or sold its small stores.

In August, 1935, plaintiff's predecessor brought about the formation of a subsidiary corporation known as Food Fair Stores, Incorporated, under the laws of the State of Maryland. The subsidiary opened a supermarket in Baltimore, Maryland, on October 31, 1935, using the name FOOD FAIR;[2] it having been suggested by a cotton goods

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[1]It is said that plaintiff and its predecessor were the originators of the "supermarket" in food marketing.

[2]This was apparently the first use of such a name as related to the retail marketing of food. Approximately 18 weeks later, a store in Washington, D.C., appropriated the same name. *Food Fair Stores, Inc. v. Square Deal Market Co.*, D. C. C. A., 206 F. (2d) 482, cert. den. 346 U.S. 937.

store in Chicago called THE FAIR. By 1938 all supermarkets operated by plaintiff's predecessor, or its subsidiary, had adopted the name FOOD FAIR, and, in 1942, the corporate name of Union Premier Food Stores, Inc., was changed to Food Fair Stores, Inc., by which the corporate identity is presently known.

While much of the testimony points to the rapid growth of plaintiff since 1953, we are not here concerned with this factor except to such extent, if any, as such subsequent activities may have some bearing upon the reasonably probable area of expansion as of May 14, 1953. The defendant, Lakeland, opened its first store in the Norfolk Portsmouth area on May 14, 1953, under the name FOOD FAIR, and it is this date—and this date only—which should be considered in ascertaining whether the name FOOD FAIR had acquired a secondary meaning in the Norfolk-Portsmouth area. The "secondary meaning" is denoted as such when the name has become associated in the minds of purchasers or customers with the source or origin of goods or services, rather than with the goods or services themselves. *Rosso and Mastracco* v. *Giant Food*, 200 Va. 159, 104 S. E. (2d) 776, 150 A. L. R. 1079. While a number of local witnesses testified as to their knowledge of plaintiff's activities prior to 1953, the true test to apply would be the confusion, if any, existing with respect to the overall general public purchasing groceries, meats, etc.[3] That

[3](a) An insurance adjuster stated that he had heard of plaintiff's operations through relatives who had traded with plaintiff. The adjuster, at the time of trial, represented plaintiff on claims arising in this area.

(b) The public opinion survey was as of August, 1959, at which time confusion admittedly existed. It is of little value in ascertaining public opinion as of May 14, 1953.

(c) A representative of "Skippy Peanut Butter", manufactured by Best Foods, Inc., had sold peanut butter to plaintiff since 1945.

FOOD FAIR was well known by persons in the grocery trade, by investors on the stock market, and among certain individuals peculiarly connected with plaintiff's activities, cannot successfully be disputed. Indeed, Lakeland's president, Harold Eisenberg, testified that he was well aware of the name FOOD FAIR and plaintiff's chain of supermarkets at the time Lakeland opened its FOOD-FAIR

(d) A representative of Valley Poultry & Produce Corp. stated that the name FOOD FAIR did not mean much in the Norfolk-Portsmouth area prior to 1953, although he identified the name with stores in Maryland and Pennsylvania. As of the date of trial he was selling poultry to both the plaintiff and Lakeland.

(e) A sugar broker representing American Sugar Refining Company testified that he had heard of "Food Fair of Philadelphia" several years prior to 1953; that he sells sugar to plaintiff; that he knows of six or seven stores in the area of Winston-Salem, North Carolina, operating under the name FOOD FAIR.

(f) A manufacturer and distributor of food specialties, who sells to both plaintiff and Lakeland, said that he knew of "Food Fair of Philadelphia" as one of the outstanding chain operations, and that he had been in one FOOD FAIR store in the District of Columbia in 1948, although he did not know who owned the store. This latter reference was obviously to a FOOD FAIR store operated by Square Deal Market Co.

(g) The Director of Promotion for a local radio and television station knew of FOOD FAIR while attending the University of Miami, Florida. Plaintiff now uses his services in advertising.

(h) The president of Atlantic Produce Co., selling to both parties, identified the name FOOD FAIR, prior to 1953, as being the chain store he had visited in Philadelphia, and that he had read of same in trade publications.

(i) A wholesale beer and wine dealer, selling to both parties, heard of the name FOOD FAIR through trade magazines.

(j) The manager of Swift & Co. ice cream plant, selling to both parties, knew that Swift & Co. sold to plaintiff since 1945, and that the name FOOD FAIR meant one of the largest chains in the country.

(k) A representative of Wholesale Food & Produce Co., selling to plaintiff, knew of FOOD FAIR prior to 1953 by reason of his association with the trade.

(l) A stock-broker stated that plaintiff's quotations were first listed as FOOD FAIR in 1942.

store on May 14, 1953, although he insists that the name FAIR was suggested by the name FURNITURE FAIR adopted by a store a short distance away from Lakeland's supermarket.

The principles of law underlying these cases of common law unfair competition are grounded upon the fact that one should not profit in the goodwill of another's trade or business. The extent to which the market has been affected by the use of the name is of paramount importance. The name may mean one thing in one territorial market, and an entirely different thing in another. The market is the customer or purchaser—it is from such customer or purchaser that profits are earned and goodwill established.

It is clear that a substantial burden rests upon the plaintiff to prove that the name FOOD FAIR had, as of May 14, 1953, acquired a secondary meaning in the Norfolk-Portsmouth area among purchasers or customers generally dealing with grocery stores and supermarkets. *Rosso and Mastracco* v. *Giant Food*, supra.

Shortly after Lakeland opened its first store on May 14, 1953, plaintiff, having been advised of this fact by another chain store, addressed a letter[4] to Lakeland under

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[4]The body of the letter reads as follows:

"We have recently learned that you are now operating a supermarket under the name 'FOOD FAIR'.

"Since 1935, we have operated a chain of supermarkets for the retail sale of groceries, meats, meat products and other related products under the trade name 'FOOD FAIR'.

"The name 'FOOD FAIR' is registered with the United States Patent Office. In addition, we have widely advertised and circularized the name by radio, newspapers, circulars and other media, as an integral part of our business operations. As a result, the name has been for sometime identified in the minds of the public and the food trade with the business which we operate and with Food Fair stores in the entire eastern and southern areas of the United States and throughout other parts of the country.

"Our common stock is listed on the New York Stock Exchange and is widely distributed throughout the country.

date of June 1, 1953, protesting the use of the name FOOD FAIR. By this time Lakeland had already opened its supermarket and, in advance thereof, had advertised the name FOOD FAIR extensively. In October, 1957, as previously noted, Tri-City opened a store in Portsmouth using the name FOOD FAIR under its licensing agreement with Lakeland. Following plaintiff's action in opening a supermarket in the Norfolk area on January 15, 1958—two days subsequent to the institution of this action — Lakeland opened another store in Portsmouth in July, 1959, using the name FOOD FAIR.[5]

Since the institution of this action, plaintiff has opened two additional supermarkets in the area. At Aragona Village in Princess Anne County—approximately 12 miles from the first store—plaintiff opened a store on June 18, 1958. Within weeks following the trial of this case, a third supermarket was opened by plaintiff on Tidewater Drive in the City of Norfolk—a distance of approximately four miles from the first location. As observed, the openings subsequent to May 14, 1953, do not have any material bearing on the final decision of this case; nor are we concerned with plaintiff's subsequent activities in the Newport News-Hampton area where certain supermarkets were acquired by plaintiff, but Lakeland claims no priority of use in that particular locality.

"The use of the name 'FOOD FAIR' by you constitutes an appropriation of our valuable trade name. Your continued use of that name will deceive the public, our customers and others into the belief that your store is part of our chain and may cause us considerable damage.

"We feel sure that, under these circumstances, you will wish to discontinue use of the name.

"However, if you persist in the use of the name, we shall be constrained to take such action as may be necessary to protect our rights."

[5]An exchange of letters in June, 1957, revealed that Lakeland was protesting the proposed opening of plaintiff's first store in the Norfolk-Portsmouth area, with plaintiff again asserting its prior right to the use of the name. These letters are of no consequence as they followed unsuccessful negotiations on plaintiff's part to purchase Lakeland's store.

Plaintiff explains its failure to take prior legal action by stating that Lakeland's one store was not considered a matter of serious consequence and that plaintiff was not aware of any intention on Lakeland's part to expand its operations. During the year 1956—the exact date being unknown—plaintiff commenced negotiations with Lakeland to purchase its property but due to Lakeland's demands which were considered exorbitant by plaintiff, these negotiations failed. Subsequent to the institution of this action, the parties resumed negotiations which reached a point of near agreement in the spring of 1959, but finally again failed on March 31, 1959. The details of these negotiations are not, in the opinion of the Court, pertinent to the decision here in controversy.

Reverting to the growth of plaintiff's business, it cannot be doubted that plaintiff is a well-established grocery chain *in certain areas*. Prior to World War II plaintiff had expanded from the Harrisburg area to localities throughout eastern Pennsylvania, New Jersey, Delaware and Maryland. Excluding for the moment any discussion of its activities in the District of Columbia and Alexandria, Virginia, plaintiff's closest stores to Norfolk using the name FOOD FAIR were in Baltimore, Maryland—a distance of approximately 245 miles.

It is the plaintiff's contention that it has the right to object to the use of the name FOOD FAIR at any place in the United States. We do not agree. Unlike the names employed in *Stork Restaurant* v. *Sahati*, 9 Cir., 166 F. (2d) 348; *Sweet Sixteen Co.* v. *Sweet "16" Shop*, 8 Cir., 15 F. (2d) 920; *White Tower System* v. *White Castle System*, 6 Cir., 90 F. (2d) 67; and *Safeway Stores* v. *Suburban Foods*, E.D. Va., 130 F. Supp. 249, the name FOOD FAIR is not so fictional and fanciful as to create a grocer's pseudonym entitling plaintiff to an exclusive use of the name in

areas where there are no commercial transactions and the area is not within the *then* reasonably probable limits of expansion.

Obviously plaintiff, although vigorously asserting its intentions to expand, has never embarked upon any fixed pattern. The executive vice-president referred to a continuity of surveys in the Norfolk and Richmond areas since 1949, when plaintiff constructed a warehouse in Baltimore which was designed to serve Baltimore, Washington, northern Virginia, Richmond, and the Norfolk-Portsmouth area. The only fixed pattern of expansion is keyed to the construction of warehouses; it being said that approximately 15 stores are necessary to support a warehouse. When there are sufficient stores to support a warehouse, another area is then opened up and the process is repeated. However, plaintiff waited nine years after the construction of its Baltimore warehouse before electing to invade any area south of the District of Columbia territory. Other than through trade journals, two or three articles written in national magazines admittedly having a circulation in Virginia, and stock-market transactions, plaintiff did no advertising by way of newspaper, magazine, radio or television calculated to reach the general public in the Norfolk-Portsmouth area. True, such advertising did take place a few weeks prior to the opening of plaintiff's first store in Norfolk on January 15, 1958, but, in the interim, the name FOOD FAIR had been substantially established by the efforts of Lakeland. Plaintiff now wishes to capitalize on Lakeland's advertising and goodwill built up from May 14, 1953, to January 15, 1958, a period of nearly five years. This it cannot do unless plaintiff substantially proves that FOOD FAIR, as of May 14, 1953, had acquired a secondary meaning in the Norfolk-Portsmouth area among purchasers or customers generally dealing with grocery stores and supermarkets.

Lakeland relies heavily upon *Food Fair Stores, Inc.* v. *Square Deal Market Co., Inc.*, D.C.C.A., 206 F. (2d) 482, growing out of plaintiff's efforts to establish a superior right to the use of the name FOOD FAIR in the operation of retail grocery stores in the District of Columbia and surrounding areas, including that part of Virginia generally denominated as the Washington Metropolitan Area. The litigation in Washington was instituted by the now plaintiff in 1948, but the court granted injunctive relief to Square Deal Market, mainly upon the ground that the latter opened its first grocery store in Washington approximately 18 weeks after plaintiff adopted the name for use in Baltimore. In other words, both parties "hit upon the use of the name" at approximately the same time. We do not have a similar question in this case.

Plaintiff insists that *Food Fair Stores* v. *Food Fair*, 1 Cir., 177 F. (2d) 177, is controlling. Disagreeing with plaintiff, it should be noted that the findings in the Massachusetts case were to the effect that, prior to the adoption and use of the name FOOD FAIR by the defendant therein, the plaintiff had (1) acquired a reputation in Massachusetts, (2) done business with wholesalers there, (3) acquired official permission for one of its subsidiaries to do business, (4) negotiated for the acquisition of enterprises in the Greater Boston area, (5) established its name, to a limited extent, among average customers of retail food stores, (6) distributed its stock among approximately 500 stockholders in Massachusetts, particularly in Greater Boston. Moreover, Massachusetts had an express statute on the subject which provided: "*likelihood of injury* to business reputation or of dilution of the distinctive quality of a trade name or trade-mark shall be ground for injunctive relief in cases of trade-mark infringement or unfair competition *notwithstanding the absence of competition be-*

tween the parties or of confusion as to source of goods or services." Thus it appears that the quantum and quality of proof required under Massachusetts law is considerably less than Virginia demands under *Rosso and Mastracco* v. *Giant Food*, supra. Of course, it goes without saying that the law of Virginia must be applied to the facts of the existing controversy.

To the extent, however, that the First Circuit concluded that the words FOOD FAIR are essentially generic terms but are nevertheless susceptile of appropriation, this Court is in complete agreement for the reasons assigned in the opinion of Circuit Judge Woodbury.

We attach little significance to the testimony of plaintiff's executive vice-president and general manager of operations wherein he stated that the Norfolk and Richmond areas were the subject of continuous surveys beginning with 1948 when plaintiff commenced the construction of its Baltimore warehouse. The witness stated that experienced real estate men were sent to the area as early as 1950 or 1951 for the purpose of making these surveys involving population, population trends, competition of other chains, consumer spending, and many other factors. These purported surveys were not presented in evidence[6] and no individual participating in such a study was called to testify. We think it clear that, as of May 14, 1953, plaintiff enjoyed a mere "hope of expansion" into the Norfolk area, consistent with its financial progress justifying same, and that plaintiff's possibility of expansion into the Norfolk

[6]The witness testified that the surveys were not retained because they became out-of-date within a few years. Assuming, arguendo the correctness of this statement, it is nevertheless unusual to note that no individual conducting any survey was called to testify. The witness also stated that plaintiff had many offerings from real estate brokers and landlords in the Norfolk area from 1950 to date, but no corroborating evidence was submitted on this point.

area as of that date is too remote to sustain plaintiff's burden of establishing by substantial evidence that the name FOOD FAIR had then acquired a secondary meaning in this locality. It does not appear that plaintiff became more than remotedly interested in Tidewater Virginia until 1955, when an approach was made to purchase Rich's Stores, located primarily in the Newport News-Hampton area and separated from the Norfolk-Portsmouth area by the Port of Hampton Roads.[7] This was followed shortly thereafter by plaintiff's efforts to acquire Lakeland's store.

The expansion in northern Virginia has little or no effect upon this litigation. In 1946 plaintiff opened a store in Alexandria using the name FOOD LANE. No other store in Virginia operated by plaintiff under the name FOOD FAIR was opened until January, 1958, which was, as noted, the Norfolk store. The store in Alexandria was acquired by plaintiff's subsidiary, Big Bear Food Stores of Virginia, Inc., when operated under the name FAIRFAX SUPER MARKET. The name was then changed which resulted in litigation instituted by Food Fair of Virginia, Inc., a corporation then using the name FOOD FAIR with the consent and permission of Square Deal Markets, Inc., the latter being the ultimate successful litigant in the District of Columbia proceedings heretofore discussed. The Alexandria case was dismissed by consent in 1948, and the now plaintiff or its subsidiary continued to operate under the name FOOD LANE. Because it was unsuccessful in the District of Columbia litigation, the present plaintiff continued to use the name FOOD LANE in northern

[7]Lakeland does not contend that its plans for expansion extend to the Newport News-Hampton area, but confines its argument to the Norfolk-Portsmouth area which is generally described as the cities of Norfolk, Portsmouth, South Norfolk and Virginia Beach, together with the counties of Norfolk and Princess Anne.

Virginia and the so-called Washington Metropolitan Area.[8] From this we note that plaintiff had not invaded Virginia under the name FOOD FAIR, but, even had it done so prior to 1953, we would not consider it of importance as the Washington Metropolitan Area is located approximately 200 miles from the Norfolk-Portsmouth area. The litigation does suggest, however, that plaintiff's plans, if any, for expansion into Virginia under the name FOOD FAIR were effectively blocked.

Nor is it of importance that plaintiff commenced expansion into Florida during 1942 or thereabouts. Plaintiff had an opportunity to acquire a chain of established stores and now urges that this marked the entire area between Maryland and Florida as the reasonably probable area of expansion. To carry this theory to the extreme, if plaintiff opened a store in California—as it at one time contemplated—all states between the east and west coasts would fall within the reasonably probable area of expansion.

As of April 25, 1953—the closest date available to the opening of Lakeland's supermarket in Norfolk—plaintiff stores were distributed in the following states as indicated:

Delaware	4
Florida	25
Maryland	19
New Jersey	45
New York	17
Pennsylvania	52
Total	162

[8]The evidence discloses that plaintiff, in October, 1958, made arrangements to use the name FOOD FAIR in the Washington Area effective October, 1960.

The foregoing does not include the stores operated as FOOD LANE. By May 1, 1954, the only marked increase was in Florida where plaintiff had acquired another chain of stores. Connecticut was invaded during the fiscal year ending April 30, 1955, by the establishment of four stores. In the fiscal year ending April 27, 1957, two stores were opened in Virginia (presumably in the Newport News-Hampton area); two were established in Tennessee; and one in Georgia. With the exception of Florida, this marked the first attempt to expand operations below the Mason-Dixon Line. As of September 2, 1959, plaintiff was operating 399 stores, as contrasted with 162 when Lakeland opened its supermarket but again, with the exception of Florida, the expansion has been essentially limited to the states of Pennsylvania, New Jersey, Maryland, and New York, plus a few stores in Connecticut and Delaware. The area concentration of these stores strongly suggests that, excepting Florida, the expansion plans have been sharply limited. Furthermore, plaintiff has continued its practice of operating under names other than FOOD FAIR.

Merely because plaintiff is a prior user of the name FOOD FAIR in other areas does not project the right of protection of said name in advance of the extension of the trade; nor does it operate as a claim of territorial rights over areas into which it thereafter may be deemed desirable to extend the trade. *United Drug Company* v. *Theodore Rectanus Company*, 248 U.S. 90.

Not overlooked is the fact that Lakeland has adopted a style and size of lettering on its signs which is substantially identical to plaintiff's signs as they existed in 1953. On the other hand it should be observed that the lettering is of standard block design. If this design or size of the signs had any meaning in this area in 1953, it could, of course,

be construed as an effort to do some act inimical to plaintiff's interest for the purpose of obtaining the benefit of the reputation of plaintiff's goods, or to forestall the extension of plaintiff's trade, but such does not exist in the present controversy.

There is little need to consider Lakeland's contention that plaintiff is estopped by the doctrine of laches. The doctrine of estoppel would only preclude plaintiff's rights to an accounting if it prevailed. While it is clear that plaintiff would be estopped to demand an accounting, it is equally apparent that plaintiff is not, and Lakeland is, entitled to injunctive relief with respect to the use of the name FOOD FAIR.

This is not a case meriting punitive damages in behalf of Lakeland. Whether it has sustained compensatory damages is reserved for further consideration.

In the final analysis these cases involving unfair competition at common law are dependent upon the individual facts of each controversy. The equities of this case are manifestly with Lakeland. It should prevail.

Counsel will prepare an appropriate decree carrying into effect this memorandum which is adopted by the Court in lieu of specific findings of fact and conclusions of law. Counsel may likewise submit specific findings not sufficiently covered herein. If a hearing is requested, the same shall be granted.

(s) Walter E. Hoffman
United States District Judge

Norfolk, Virginia
January 3, 1961

ORDER

It appearing to the Court that the following additional findings of fact should be made a part of the record, it is so ORDERED:

The name "Food Fair" was, prior to the use thereof by Lakeland, used by retail grocers not owned by Plaintiff in Pulaski, Virginia, Tazewell, Virginia, Martinsville, Virginia, and Richmond, Virginia.

In Richmond, Virginia, a grocery store not owned by Plaintiff traded as Food Fair from 1937 to 1957.

In Statesville, North Carolina, a retail grocery store not owned by Plaintiff trades as "Food Fair" since 1951.

In Winston-Salem, North Carolina, a retail grocery chain not owned by Plaintiff has traded as "Food Fair" since August of 1947, now operating six stores.

In Atlanta, Macon and Savannah, Georgia, retail grocery markets not owned by Plaintiff operate or have operated under the trade name "Food Fair".

The same situation is true as to Montgomery, Alabama, where two stores have been operating since 1952 under ownership other than Plaintiff's.

In Tennessee, four stores operating under the trade name of "Food Fair" were not owned by the Plaintiff but were purchased by the Plaintiff from the owners as of July 31, 1956.

(s) Walter E. Hoffman
United States District Judge

Norfolk, Virginia
April 28, 1961

ANSWERS TO INTERROGATORIES

Plaintiff, Food Fair Stores, Inc., by Myer B. Marcus, Executive Vice President, its agent, having been duly sworn, makes the following responses to the interrogatories served upon it by defendants September 10, 1959:

1. Plaintiff adopted the tradename "Food Fair" August 14, 1935, when it obtained a charter for The Food Fair, Inc., a wholly owned subsidiary, from the State of Maryland. The name "Food Fair" was obtained from no source but was originated by officers of plaintiff's predecessor corporation. It was suggested by the name "The Fair" on a Chicago department store.

2. At the time of the adoption of the Food Fair tradename plaintiff's predecessor corporation owned and operated twenty to twenty-five conventional service type grocery stores in eastern Pennsylvania under the name Union Premier Food Stores. All these stores had been disposed of by 1937. In addition plaintiff operated the following supermarkets at the following locations at the time of the adoption of the Food Fair tradename, August 14, 1935:

Giant Quality Food Price Cutters, Inc., Harrisburg, Pennsylvania.

Union Premier Food Store, Philadelphia, Pennsylvania.

Giant Quality Food Price Cutters, Inc., Reading, Pennsylvania.

Giant Quality Food Price Cutters, Inc., York, Pennsylvania.

Giant Quality Food Price Cutters, Inc., Columbia, Pennsylvania.

Giant Quality Food Price Cutters, Inc., Allentown, Pennsylvania.

Airport Market, Pennsauken, New Jersey
Giant Quality Food Price Cutters, Inc., Coatsville, Pennsylvania.

The Airport Market closed October 31, 1935. The names on the other stores were changed to Food Fair by 1938.

3. To plaintiff's knowledge there were no other retail grocery stores trading under the name of "Food Fair" or under a name of which "Food Fair" was a part at the time plaintiff adopted the tradename "Food Fair."

4. See attached Appendix A.

5. Following termination of the litigation in the District of Columbia in which plaintiff in this case was plaintiff and Square Deal Market, Company, Inc., was defendant. The Grand Union Company, purchased Square Deal Markets, Inc. The Grand Union Company, by contract dated October 9, 1958, conveyed to the plaintiff the right to use the name "Food Fair" in the Washington, D.C. area. Plaintiff at present operates four supermarkets under the name "Food Lane" in the Washington, D.C. area but will convert such markets to the name "Food Fair" by October 9, 1960.

6. See attached Appendix A. Substance of letters indicated in Appendix A is the same as Exhibit A attached to the complaint.

7. See attached Appendix B.

8. In May, 1953, when defendant Lakeland Grocery Corp. opened its business in Princess Anne County, Virginia, the nearest grocery store operated by plaintiff under the tradename "Food Fair" was in Baltimore, Maryland.

Myer B. Marcus
Executive Vice President
Food Fair Stores, Inc.

State	City	Name Used	No. of Stores	Date of First Knowledge	Protest Letter Sent	Duration of Use as of 1 13 58
Ala.	Montgomery	Lazenby's Food Fair	2	4/52	4/18/52	Uncertain
Conn.	Bridgeport	Ike Fitzgerald's Food Fair Market	1	7/16/54	8/16/54	Name Changed
Fla.	St. Augustine	Nat's Food Fair	1	4/22/49	5/26/49	Uncertain
	Tampa	Fla. Food Fair	2	7/50	10/15/51	Favorable Decree (11/21/55)
Ga.	Atlanta	Food Fair Inc.	1	4/29/52	6/2/52	Discontinued
	Atlanta	Clark's Food Fair	2	3/18/53	3/25/53	Continued
	Macon	Food Fair Supermarket	1	12/52	1/28/53	Continued
	Savannah	Food Fair Supermarket	1	8/51	8/9/51	Continued
Md.	Baltimore	"Henry's Quality Food at Fair Prices"	1	4/30/49	5/3/49	Discontinued
	Baltimore (25 & Charles.) (Eutaw St.)	"We Sell Food at Fair Prices"	1	5/48	7/49	Discontinued
Mass.	Brookline	Food Fair	3	12/47	12/26/47	Favorable Decree (10/1/48)
	Holyoke	Agawan Food Fair	1	11/26/52	1/8/53	Name Changed
	Shrewsbury	Food Fair	1	5/49	prior to 5/18/49	Name Changed
N. J.	Camden	Fred's Food Fair	1	4/28/48	4/29/48	Name Changed
	Cranford	Santones Food Fair	1	Unknown	Unknown	Ceased Optn. 4/1/47

	Hammonton	Mid-Way Food Fair	1	12/4/51	1/29/52	Suit 2/15/52 use discont'd. 8/19/52
	Vineland	Handy Food Fair	1	9/18/47	Unknown	Favorable Decree (7/13/48)
N. Y.	Bronx	Food Fair	1	1/13/50	2/7/50	Name Changed
	Monticello & So. Fallsburg	Famous Food Fair	2	8/9/49	8/16/49	Continued
	Manhattan	China Food Fair Inc.	1	1/7/55	1/12/55	Favorable Decree (1/15/57)
	Manhattan	Marotta's Italian American Food Fair	1	8/1/52	9/18/52	Name Changed
	Queens	Queen's Food Fair	1	5/3/48	5/3/48	Name Changed
	Staten Island	Food Fair	1	1/19/51	2/2/51	Name Changed
N. C.	Statesville	Fraley's Food Fair	1	2/51	8/7/51	Continued
	Winston-Salem	Food Fair	3	8/47	8/12/47 7/10/51	Continued
Pa.	Moosic	Rocky Glen Food Fair	1	9/18/53	10/1/53	Name Changed
R. I.	Newport	Food Fair Supermarket	1	5/49	5/26/49	Modified
Tenn.	Chattanooga (2) also Marietta (1) & Dalton, Ga. (1)	Food Fair	4	9/1/52	9/18/52	Purchased by Plaintiff 7/31/56
Va.	Pulaski	Food Fair	1	Unk.	9/18/52	Continued
	Richmond	Food Fair	1	4/56	none	Discontinued
Washington, D.C.		Food Fair	1	4/7/36	4/7/36	Unfavorable Decree (9/20/52)

APPENDIX A

Date of Purchase	Vendor	Circumstances
July 6, 1948	Queens Food Fair New York City	Plaintiff paid for sign change and change in corporate charter.
January 3, 1956	Ike Fitzgerald's Food Fair Market Bridgeport, Conn.	Plaintiff paid for sign change.
June 14, 1956	Food Fair, Inc. Atlanta, Georgia	Plaintiff purchased store in move to extend operations of Southern division.
July 31, 1956	Tennessee Food Fair, Inc. Chattanooga, Tennessee, Marietta and Dalton, Ga.	Plaintiff purchased stores in move to extend operations of Southern division.
October 9, 1958	Grand Union Company Fairlawn, New Jersey	See answer to Interrogatory 5.

APPENDIX B